

from the State of Missouri into the State of Texas, and charging misbranding in violation of the food and drugs act. The article was labeled in part: (Retail carton) "Dairy Maid Brand Pure Creamery Butter \* \* \* Weight One-Pound Net," (shipping carton) "Ozark Creamery Company Neosho, Missouri."

Misbranding of the article was alleged in the libels for the reason that the statement appearing on the labels, "Weight One Pound Net," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was food in package form and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On April 23, 1924, the Ozark Creamery Co., Neosho, Mo., having appeared as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon the execution of a good and sufficient bond, in conformity with section 10 of the act.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**12366. Misbranding of Thomas' emmenagogue pills, Arthur's emmenagogue pills, Leslie's emmenagogue pills, Bick's Sextone pills, Arthur's Sextone tablets, Bick's Daisy 99, Bick's nerve tonic, and La Derma Vegiseptic discs. U. S. v. 5 Boxes of Thomas' Emmenagogue Pills, et al. Default decree ordering destruction of products.** (F. & D. No. 15319. S. Nos. C-3152, C-3153, C-3154, C-3155, C-3156, C-3157.)

On August 19, 1921, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 5 boxes of Thomas' emmenagogue pills, 6 boxes of Arthur's emmenagogue pills, 5 boxes of Leslie's emmenagogue pills, 1 box of Bick's Sextone pills, 24 boxes of Arthur's Sextone tablets, 5 boxes of Bick's Daisy 99, 11 boxes of Bick's nerve tonic, and 11 boxes of La Derma Vagiseptic discs, at Canyon, Texas, alleging that the articles had been shipped by the Palestine Drug Co., from St. Louis, Mo., in part August 29, 1918, and in part August 21, 1919, and transported from the State of Missouri into the State of Texas, and charging misbranding in violation of the food and drugs act as amended.

Analysis of samples of the articles by the Bureau of Chemistry of this department showed that Thomas' emmenagogue pills, Arthur's emmenagogue pills, and Leslie's emmenagogue pills contained iron sulphate, aloes, and extract of plant drugs, coated with sugar and calcium carbonate, colored pink; that Bick's Sextone pills consisted of two products—chocolate-colored pills containing a small amount of extract of plant drugs, 50 per cent of sugar, 25 per cent of calcium carbonate, 7 per cent of iron oxid, and 7 per cent of powdered talc, and orange-colored tablets containing 31 per cent of metallic iron, 11 per cent of calcium carbonate, extract of nux vomica, and sugar; that Arthur's Sextone tablets contained iron oxid, calcium carbonate, a compound of zinc, and extract of plant drugs, coated with sugar; that Bick's Daisy 99 consisted of tablets containing iron sulphate, methylene blue, and material derived from plants including cubebs, copaiba, santalwood, and starch, coated with sugar and calcium carbonate; that Bick's nerve tonic consisted of two products—brown tablets containing phosphorus and compounds of zinc and iron, coated with sugar and calcium carbonate, and yellow pellets containing compounds of iron, strychnine, and phosphorus, coated with sugar and calcium carbonate; and that La Derma Vagiseptic discs contained salt, alum, starch, milk sugar, and talc.

Misbranding of the articles was alleged in substance in the libel for the reason that the following statements appearing in the labeling, ("Thomas'," "Arthur's," and "Leslie's," emmenagogue pills, box) "Emmenagogue Pills recommended for Amenorrhea, Dysmenorrhea and other Menstrual Troubles. Beginning treatment before the regular monthly period, continue treatment until relief is obtained," (Bick's Sextone pills, box) "Sextone Pills \* \* \* Composed \* \* \* of \* \* \* Aphrodisiac Agencies," (Arthur's Sextone tablets, wrapper) "Designed to correct. \* \* \* the Evil Results Following Sexual or Alcoholic Excesses, Overwork, Worry, Etc. \* \* \* Sextone Tablets For Either Sex Composed \* \* \* of the Most Potent and Dependable Aphrodisiac Agencies," (circular) "Sextone Tablets \* \* \* cases of exhaustion of nervous energy \* \* \* stimulate \* \* \* the Sexual Plexes \* \* \* nourish the nervous system and build it up," (Bick's Daisy 99, wrap-

per) "Gonorrhea \* \* \* and functional ailments of the Kidneys and Bladder in both Male and Female," (Bick's nerve tonic, wrapper) "Nerve Tonic \* \* \* for Nervous Prostration and bodily aches and pains \* \* \* a nerve \* \* \* tonic \* \* \* for all female complaints \* \* \* for Weakness, Nervousness, Headache, Kidney trouble and loss of Power in either Sex \* \* \* for female weakness, heart trouble and where a general breakdown of the nervous system exists," (LaDerma Vagiseptic discs, wrapper) "for \* \* \* Amenorrhea and other Uterine and Vaginal Disorders," (circular) "For \* \* \* Amenorrhea \* \* \* Ulceration of the Uterus and Catarrh of the Uterus \* \* \* Gonorrhea," were false and fraudulent in that the articles contained no ingredient or combination of ingredients capable of producing the said therapeutic effects.

On November 2, 1922, no claimant having appeared for the property, judgment was entered, finding that the product should be condemned, and it was ordered by the court that the product be destroyed by the United States marshal.

HOWARD M. GORE, *Acting Secretary of Agriculture.*

**12367. Misbranding and alleged adulteration of vinegar. U. S. v. 95 Barrels, more or less, Alleged Apple Cider Vinegar. Case tried to the court on an agreed statement of facts. Judgment for the Government on misbranding charge. Case carried to Circuit Court of Appeals on writ of error. Judgment of lower court reversed. Writ of certiorari to the U. S. Supreme Court. Judgment of appellate court reversed and that of trial court affirmed. (F. & D. No. 12068. I. S. No. 12414-r. S. No. C-1676.)**

On January 12, 1920, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 95 barrels, more or less, of alleged apple cider vinegar, at Cleveland, Ohio, alleging that the article had been shipped by the Douglas Packing Co. from Fairport, N. Y., on or about November 24, 1919, and transported from the State of New York into the State of Ohio, and charging adulteration and misbranding in violation of the food and drugs act. The article was labeled in part: (Head of barrel) "Douglas Packing Co. Excelsior Brand Apple Cider Vinegar Made From Selected Apples Reduced to 4 Per Centum Rochester N. Y." (other end of barrel) "Guaranteed to Comply With all Pure Food Laws Douglas Packing Co. Rochester N. Y."

Adulteration of the article was alleged in the libel for the reason that vinegar made from evaporated or dried apple products had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding was alleged in substance for the reason that the statements appearing on the label, "Vinegar made from Selected Apples" and "Manufactured [Guaranteed] to comply with all Pure Food Laws," were false and misleading and deceived and misled the purchaser, since the analysis of the product showed it to be made from evaporated or dried apple products. Misbranding was alleged for the further reason that the article was an imitation of and was offered for sale under the distinctive name of another article, to wit, apple cider vinegar.

On April 29, 1922, the Douglas Packing Co., Rochester, N. Y., having appeared as claimant for the property and having on January 30, 1922, filed a demurrer to the libel, the said demurrer was overruled by District Judge Westenhaver. On November 1, 1922, the case having come on for trial before the court on an agreed statement of facts, the court delivered the following opinion sustaining the Government on the misbranding charge (Westenhaver, *D. J.*):

"The Government has seized and libeled, and now seeks to condemn 95 barrels of vinegar shipped in interstate commerce, on the ground that this vinegar is adulterated and misbranded. The shipper, Douglas Packing Company, has appeared and claimed the vinegar, and makes defense. A jury trial has been waived in writing, and the case tried to the Court on an agreed statement of facts.

"None of the material facts is in dispute. The vinegar is labeled: 'Excelsior Brand Apple Cider Vinegar Made from Selected Apples Reduced to four per centum. Guaranteed to comply with all Pure Food Laws.' This vinegar is not made from the expressed juice of fresh apples as pure cider vinegar is commonly understood to be made, but is made from evaporated apples. Claimant, it is agreed, selects mature, sound fruit, free from rot and ferment, and dehydrates same by the most approved processes. In the process of dehydrating